IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl.Appeal No.233-SB of 2001
Date of Decision: 25.1.2007

Tejpal @ Gandhi.

..... Appellant.

Versus

The State of Punjab.

..... Respondent

CORAM: Hon'ble Mr.Justice Mahesh Grover

....

Present: Ms.Kamalapreet, Advocate for the appellant as Amicus Curiae.
Shri B.S.Sewak, Deputy Advocate General, Punjab for the State.

....

Mahesh Grover,J.

The present appeal has been directed through jail against the judgment of conviction and order of sentence, both dated 24.1.2001whereby the Additional Sessions Judge, Faridkot (hereinafter described as `the trial Court') held the appellant guilty under Section 376 of the Indian Penal Code (for short, `the I.P.C.') and sentenced him to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.5000/- and in default thereof, to further undergo rigorous imprisonment of six months. The period of detention during the enquiry, investigation and trial was ordered to be set off against the above sentence and out of the amount of fine, if deposited or recovered, a sum of Rs.4000/- was ordered to be given as compensation to the victim.

Briefly stated, the case of the prosecution is that Ram Bibi- complainant made a statement before the Police on 22.3.1999 that she is a resident of Faridkot and has two sons and five daughters. The family is of labourers. On 21.3.1999, her daughter- Munni, aged 7 years (hereinafter referred to as `the prosecutrix') went to purchase articles from the shop near Chowk, Sadiq, Faridkot. When the prosecutrix did not return home, the complainant along with her husband- Manphool Ram and brother Om Parkash went to search for her and at about 10.00 P.M., a scream was heard from a hut near the Grain Market where the light was on. On going inside the hut, they saw a young man of 22- 23 years, who ran away on their intrusion. They found the prosecutrix lying in the hut with injuries on her face, nose, back and neck and her salwar had been removed and it appeared that she had been raped. The prosecutrix was brought back to their own hut and initially they did not discuss the matter with any body fearing for their reputation, but ultimately seeing her condition, she was removed to the Medical College, Faridkot .

The doctor,who had examined the prosecutrix, sent a ruqa to the Police, who set the investigation process into motion., The appellant was apprehended on 28.3.1999 and was subjected to medical examination by a doctor. The challan was presented against the appellant in the Court of the Illaqa Magistrate, who, after following due process, committed the case to the Court of Sessions for trial.

The prosecution examined the complainant- Ram Bibi as PW1, Manphool Ram as PW2, Dr.Anita Madan as PW3, Dr. K.K. Aggarwal as

PW4, one Wazira son of Bija Ram as PW5 and Sohan Lal as PW8, besides the police officials, who had recorded the statement of the complainant, conducted the investigation and presented the challan.

The appellant denied the allegations levelled against him and pleaded false implication when his statement under Section 313 of the Code of Criminal Procedure,1973 was recorded. No evidence, however, was led by him to establish his innocence.

The trial Court, thereafter, on appraisal of evidence before it, convicted and sentenced the appellant in the manner mentioned here-in-above vide the impugned judgment and order of sentence.

Ms. Kamalpreet, Advocate, who was appointed as Amicus Curie to represent the appellant, assailed the judgment under appeal by contending that there was no evidence on record to connect the appellant with the commission of the offence and even his identity was not established. He was shown to the complainant party when the police had arrested him and hence, his case had been seriously prejudiced. It was also contended that there were number of discrepancies in the statements of the witnesses which were not explained by the prosecution. A specific reference was made to the statement of PW5-Wazira, who had stated that he had seen the prosecutrix being taken away by the appellant. This witness is closely related to the complainant and is not understandable that why he did not question the appellant if the latter was actually taking the girl away with him.

Learned counsel appearing for the State, on the other hand,

pointed out that the girl was of tender age and the rape has been conclusively established by the medical testimony on record and no leniency could be shown to the appellant.

I have heard learned counsel for the parties and have perused the evidence on record.

PW3-Dr. Anita Madan, who medically examined the prosecutrix, found the following injuries on her person:-

> "1. 2cms x 1 cm irregular abrasion present on the middle of the forehead.
>
> 2. Multiple abrasions present over both the cheeks and chin.
>
> 3. Multiple abrasions present on whole of the nose. Nose was swollen.
>
> 4. Upper lip swollen.
>
> 5. Three small abrasions, 2 cm. X 1 cm. Each, 2 cms. Apart each present on back of the trunk in the lumber region.
>
> 6. 2 cms. X 1 cm abrasion present on the right side of the back at level of right iliac crest, 3 cms. Lateral to the spine.
>
> 7. External examination of the genitalia – Both lebia majora and menora swollen, sticky blood stained discharge seen on the external genitalia. Hymen ruptured. A small lacerated wound present at the fourchette of the size of 0.5 cm. x 0.2cm. On PV examination one finger admitted easily in the vagina. Two vaginal slides and one vaginal swab taken and sent to Chemical Examiner, Patiala for chemical examination."

There is, thus, no ambiguity regarding the fact that a rape had been committed upon the minor girl. The medical testimony of PW4- Dr. K.K. Aggarwal establishes the fact that the appellant was sexually competent.

The only question that has to be determined is whether it was the appellant who was perpetrator of the offence which has been alleged against him or not. As per the evidence available on record, the appellant was in the midst of the commission of the offence when the scream of the prosecutrix had attracted the complainant, her husband and brother, who were searching for the former. The appellant is stated to have run away on the intrusion of the complainant. He was concededly living in the cluster of jhuggis where the complainant was also residing. The most clinching evidence against the appellant is that it was in his jhuggi that the prosecutrix was discovered. It was not his case that he was not present in his jhuggi or that some one else had occupied his jhuggi. This was neither the defence taken up nor is there any evidence to this effect. This fact conclusively establishes the involvement of the appellant in the commission of the offence. Besides, there is no reason for the complainant to implicate the appellant falsely in the absence of any enmity or any motive to do the same.

For the foregoing reasons, there is no merit in the appeal which is hereby dismissed and the impugned judgment and order of sentence are maintained.

January 25 ,2007 (Mahesh Grover)
"SCM" Judge